

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

MICHAEL MCCARTHY
Claimant

VS.

TERRA INDUSTRIES, INC.
Respondent

AND

ACE-USA
Insurance Carrier

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Docket No. 1,002,800

ORDER

Respondent and its insurance carrier appealed the August 11, 2003 Order for Medical Treatment (Order) entered by Administrative Law Judge Pamela J. Fuller.

ISSUES

This is a claim for an April 10, 1999 accident and the resulting left wrist injury. In the August 11, 2003 preliminary hearing Order, Judge Fuller ordered respondent and its insurance carrier to provide claimant with additional medical treatment.

Respondent and its insurance carrier contend Judge Fuller erred. They argue claimant's present need for a left wrist fusion is the result of the work that claimant performed after early June 1999, when claimant last worked for respondent. Accordingly, they argue claimant has sustained a later accidental injury for which they should not be held responsible. Therefore, they request the Board to reverse the August 11, 2003 Order.

Conversely, claimant argues the proposed left wrist fusion is the natural and probable consequence of the April 10, 1999 accident. Accordingly, claimant requests the Board to affirm the August 11, 2003 Order.

The only issue before the Board on this appeal is whether claimant's present need for the left wrist fusion is a natural and probable consequence of the April 1999 accident or whether it results from a new and independent accident.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date, the Board finds and concludes:

The August 11, 2003 Order should be affirmed. The Board finds no reason to disturb the Judge's implicit finding that claimant's present need for left wrist surgery is the natural and probable consequence of the April 10, 1999 accident. On that date, claimant injured his left wrist while locking a hand truck. Following that accident claimant underwent four wrist surgeries, none of which successfully resolved claimant's symptoms. Moreover, one of claimant's doctors first recommended a left wrist fusion in early 2000. Claimant testified, in part:

Q. (Mr. Shellenberger) Approximately when did you first learn that a fusion of that wrist might be necessary?

A. (Claimant) It was after the very first surgery that I had. Dr. Herron *[sic]*, when it didn't work, Dr. Herron *[sic]* said the only thing he could offer us at that point was a fusion.

Q. Why did you not do it at that time?

A. Because the workman's comp nurse that was with me at that point, her name was Connie Simmons, was in the room with us and said, "You don't want that, do you?" and I said, "No," and she said, "We'd like to have a second opinion."¹

That testimony is credible.

In May 2002, claimant first saw orthopedic surgeon Dr. J. Mark Melhorn, who now recommends a left wrist fusion. According to Dr. Melhorn, claimant developed progressive osteoarthritis in his wrist in large part due to the April 1999 traumatic injury. The doctor believes that claimant would not have the degenerative arthritis in the wrist to the present extent if he had not sustained the April 1999 traumatic injury. Nonetheless, the doctor also believes claimant's arthritic change is greater than one would normally expect from a one-time traumatic event. The doctor testified, in part:

Q. (Mr. Shellenberger) And is there any way we can quantify what percentage there would be as opposed to the contributing later?

A. (Dr. Melhorn) I can provide a reasonable estimate which probably is not even within a reasonable degree of medical probability, however, if you asked me that

¹ P.H. Trans. at 5.

question 100 times, 51 out of 100 times I would tell you that most likely 75 percent of his current condition is represented by the initial traumatic event, and 25 percent would be represented by those physical activities, both home and work, which have been performed subsequent to the injury.

Q. And as far as the breakdown of the 25 percent that's home and work, you don't know what he's done at home. Would you even be able to break that down for us?

A. No.²

Moreover, Dr. Melhorn testified there was no good way to treat claimant's left wrist injury other than fusing it.

Knowing that respondent and its insurance carrier were contending that claimant's subsequent work was the reason that he now needed a left wrist fusion, claimant testified the work he performed for his subsequent employers did not violate his medical restrictions. And as far as he knows, claimant does not believe he has injured his left wrist due to any work that he has performed since last working for respondent.

The Board concludes that claimant's present need for a left wrist fusion is a natural and probable consequence of the April 1999 accident. Accordingly, despite the fact that claimant's subsequent activities may have contributed to his ongoing symptoms, respondent and its insurance carrier are responsible for the additional medical treatment ordered by Judge Fuller.

For future reference, the parties are encouraged to introduce only those records that are material to the issues. Moreover, doctor and hospital records may contain many documents that have little, if any, evidentiary value that would only needlessly burden the record.

WHEREFORE, the Board affirms the August 11, 2003 Order for Medical Treatment.

IT IS SO ORDERED.

Dated this ____ day of November 2003.

BOARD MEMBER

² Melhorn Depo. (Mar. 6, 2003) at 35-36.

c: Grant C. Shellenberger, Attorney for Claimant
Gary K. Albin, Attorney for Respondent and its Insurance Carrier
Pamela J. Fuller, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director